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Bhupinder S. Randhawa  
Bereskin & Parr  
Box 401  
40 King Street West  
Toronto, ON M5H 3Y2  
CANADA

EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/886,014

Applicant(s)

TIMMS ET AL.

Examiner

Steven B. McAllister

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3:
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the system showing a location of the fastener in two or more retail establishments; the system having a link for displaying real time information relating to the availability of a selected fastener; and the computer system being accessed remotely must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Election/Restrictions***

No restriction or election of species has been required in the case. However, it is noted that the examiner reserves the right to require a restriction or election of species at a later date, should it be appropriate, consistent with the MPEP.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-10, 19-29, 36 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites that the user interface includes a personal computer and monitor. However, as recited in claim 1, the user interface is a software feature.

Claims 8 and 9 are indedfinite because it recites that the software is given to users on a medium, but claim 1 recites that the retailer provides consumers access to a computer.

Claim 19 recited selecting a specific fastener type, going to a next page showing fasteners of that type; and the repeating the steps. But as understood from the specification, the user then looks at subgroups within the first group, not relecting the first selected group.

Claim 27 is unclear because it recites (c ) twice.

Claim 28 recites "selecting the particular fastener" as part of (b) of claim 27. As recited the claim has the particular fastener selected in (b), (c) since it repeats (b), and (d).

Claim 36 is indefinite because it is unclear what is meant by "C35" in line 1.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 30-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 30-35 recite only a non-function data structure. Even though embedded on a tangible medium, such a structure is per se non-statutory. It is noted that a computer program, causing a computing to display the pages would be statutory.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al (6,507,352) in view of Brewaeys et al (4,408,693).

Cohen shows stocking numerous items at a retail outlet, each being identifiable by a visible retail location identifiers comprising e.g., aisle and shelf location; providing consumers with access to a computer programmed with merchandising software having a user interface for receiving input and displaying icons describing the items and displaying the retail location identifiers; and allowing consumers public access to the items. Cohen does not show that the items comprise fasteners. Brewaeys shows selling fasteners. It would have been obvious to one of ordinary skill in the art to modify the method of Cohen by selling fasteners in order to provide a wider array of items for sale to the customer.

As to claim 3, Cohen in view of Brewaeys shows fasteners stocked in predetermined containers, identifiable by the visible container identifiers comprising the fasteners visible in the pack, the container identifiers being displayed on the user interface.

As to claim 3, Cohen in view of Brewaeys shows that the icons include images of the fasteners.

As to claim 4, Cohen in view of Breaeys show all elements of the claim including organizing according to item type (in view of Brewaeys meaning fastener type), and that user input determines the display of the pages.

As to claim 5, Cohen in view of Brewaeys show a screen for displaying videos demonstrating the use of at least some fasteners.

As to claim 6, Cohen in view of Brewaeys show a touch screen and that (b) is carried out at the store.

As to claims 7-10, Cohen in view of Brewaeys show all elements of the claims except carrying out step (b) remote from the retail outlet via a network browser. However, to do so is notoriously old and well known in the art. It would have been obvious to further modify the method of Cohen in order to facilitate comarison by the shopper in his home.

Claims 11-13, 14, 16, 17 and 30-37 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cohen et al.

It is noted that claims 11-17 were interpreted as an apparatus since a system per se is not defined per 35 USC 101. In so interpreting, it is noted that mere information stored on the apparatus is not a limitation on the apparatus.

Further, it is noted that clauses such as "for receiving" and "for selecting" are interpreted as intended use.

Cohen shows a computer having a user interface; a collection of web pages being displayed on the user interface including selection pages and detail pages and having icons for selecting different types of items and wherein each detail page includes item information; and display software.

Alternatively, Cohen shows all elements as discussed above, but does not show that the items are fasteners. However, it is notoriously old and well known in the art to sell fasteners. It would have been obvious to one of ordinary skill in the art to do so in order to widen the array of products available to the customer.

As to claims 14, 16 and 17, it is noted that these claims recite elements of the information stored on the apparatus only, and not limitations of the apparatus.

As to claim 30, Cohen shows all elements of the claim, or in the alternative shows all except that the items are fasteners, as discussed above regarding the apparatus.

As to claims 31-34, Cohen (or in the alternative Cohen in view of the well known prior art) shows all elements.

As to claims 35 and 36, Cohen shows all elements except providing real time stock information. However, to do so is notoriously old and well known in the art. It

would have been obvious to one of ordinary skill in the art to further modify the method of Cohen by providing real time stock information in order to save wasted trips to retrieve items.

As to claim 37, as broadly claimed Cohen shows that the database is stored remotely.

Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (5,283,865) in view of Brewaeys et al.

Johnson identifying an application in which an item can be used; accessing a collection of pages by a computer, the pages describing the items; navigating through the pages to identify a particular item suitable for the application; and choosing the appropriate item. Johnson does not explicitly show that the items comprise fasteners. Brewaeys shows selling fasteners. It would have been obvious to one of ordinary skill in the art to modify the method of Johnson as taught by Brewaeys in order to provide a broader array of parts that a customer might need.

As to claim 19, Johnson in view of Brewaeys show accessing an overview main page that illustrates two or more groups; selecting a type or group; viewing another page illustrating items with the type; and viewing the detailed page.



Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Brewaeys et al as applied to claims 18 and 19 above, and further in view of Cohen et al.

Johnson in view of Brewaeys shows all elements of the claim except showing location information. Cohen shows providing stock locations. It would have been obvious to one of ordinary skill in the art to further modify the method of Johnson by providing stock location in order to ease finding the part.

As to claims 21 and 22, Johnson in view of Brewaeys and Cohen et al show all elements of the claim except providing real time stock information. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to further modify the method of Johnson by providing real time stock information in order to save wasted trips looking for items.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al in view of Brewaeys et al.

Cohen shows all elements of the claims except comparing the types of fasteners with a sample. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the arts to modify the method of the claim by doing so in order to ensure getting a similar fastener to the sample.

The examiner notes that he has personally performed this iterative comparison to a sample fastener prior to the application date.

Claims 1-15, and 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz et al (6,587,835) in view of Brewaeys et al (4,408,693).

Treyz shows stocking numerous items at a retail outlet, each being identifiable by a visible retail location identifiers; providing consumers with access to a computer programmed with merchandising software having a user interface for receiving input and displaying icons describing the items and displaying the retail location identifiers; and allowing consumers public access to the items. Treyz does not show that the items comprise fasteners. Brewaeys shows selling fasteners. It would have been obvious to one of ordinary skill in the art to modify the method of Treyz by selling fasteners in order to provide a wider array of items for sale to the customer.

It is noted that Treyz et al in view of Brewaeys et al shows all elements of claims 2-6.

As to claim 7, Treyz et al in view of Brewaeys et al show performing (b) remote from the particular retail outlet.

As to claims 9 and 10, Treyz et al in view of Brewaeys et al show all elements.

As to claim 11, Treyz et al in view of Brewaeys et al show all elements of the apparatus.

As to claims 12-15, all elements are shown.

As to claim 18, Treyz et al show identifying an application for an item (since applications such as "photography" and "video"); accessing a collection of pages by using a computer; navigating through the pages to find a particular item for the

application; and choosing the item. Treyz et al do not show that the items is a fastener. Brewaeys et al show selling fasteners. It would have been obvious to one of ordinary skill in the art to modify the method of Treyz by providing for the sale of fasteners in order to facilitate greater selection for the customer.

As to claim 19, Treyz shows accessing an overview page; selecting a type; viewing another page of items of that type, as necessary; and viewing a detail page.

As to claims 20-24, Treyz et al in view of Brewaeys et al show all elements of the claims.

As to claim 25, Treyz et al in view of Brewaeys et al show going to the location of the item and purchasing the item.

As to claim 26, Treyz et al in view of Brewaeys et al show using a networked browser.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Steven B. McAllister